

ARKANSAS SUPREME COURT

No. CR 05-648 and CACR 04-525

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered

February 1, 2007

EDWARD LOVELESS

Petitioner

PRO SE MOTION FOR ACCESS TO
TRANSCRIPT AND RECORDS
[CIRCUIT COURT OF POPE COUNTY,
CR 2002-658, CR 2003-115]

v.

STATE OF ARKANSAS

Respondent

MOTION DENIED.

PER CURIAM

In 2003, petitioner Edward Loveless was found guilty by a jury of possession of paraphernalia with intent to manufacture a controlled substance and manufacture of a controlled substance. An aggregate sentence of 240 months' imprisonment was imposed. Fines totaling \$10,000.00 were also imposed. The Arkansas Court of Appeals affirmed. *Loveless v. State*, CACR 04-525 (Ark. App. Mar. 2, 2005). Petitioner subsequently timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1, which was denied. We affirmed the trial court's order. *Loveless v. State*, CR 05-648 (Ark. Jan. 26, 2006) (*per curiam*).

Petitioner, who contends that he is indigent, now seeks access to the "trial transcript, record, files, and any other submission" pertaining to the direct appeal of the judgment of conviction and the appeal from the Rule 37.1 order. As providing petitioner with access to the material would require photocopying it at public expense inasmuch as he is incarcerated and not in a position to examine the

material in our clerk's office, we treat the motion as a motion for photocopies at public expense.¹

Indigency alone does not entitle a petitioner to free photocopying. *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (*per curiam*). A petitioner is not entitled to a photocopy of material on file with either appellate court unless he or she demonstrates some compelling need for specific documentary evidence to support an allegation contained in a petition for postconviction relief. *See Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (*per curiam*). Petitioner here alleges that the material he seeks is needed for postconviction and civil rights proceedings that he has instigated in federal court. He has cited, however, no specific reason for requiring the requested material beyond the general claim that the material would be helpful to the causes of action. As petitioner has failed to establish a compelling need for specific documentary evidence to support an allegation contained in a petition for postconviction relief, the motion is denied.

It should be noted that when an appeal has been lodged in either this court or the court of appeals, the appeal transcript and other material filed on appeal remain permanently on file with the clerk. Persons may review a transcript or other material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a transcript or other material on file may write this court, remit the photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (*per curiam*).

Motion denied

¹For clerical purposes, the motion has been filed under the docket numbers assigned to the direct appeal of the judgment which was lodged in the Arkansas Court of Appeals and the Rule 37.1 appeal lodged in this court. This court decides all motions for photocopying at public expense because such motions are considered to be requests for postconviction relief. *See Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (*per curiam*).